



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 20 2009

Steven P. Price, Esq.
The Law Offices of Steven P. Price
Lincoln Center
7800 IH-10 West
Suite 521
San Antonio, TX 78230

RE: MUR 6188
Clifford Morgan

Dear Mr. Price:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that Clifford Morgan, your client, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On April 30, 2009, the Commission found reason to believe that your client violated 2 U.S.C. §§ 432(c)(5), 434(b)(4) and (6), provisions of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law. Enclosed is a conciliation agreement for your consideration.

If your client is interested in engaging in pre-probable cause conciliation, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit

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any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 2 U.S.C. § 437g(a), 11 C.F.R. Part 111 (Subpart A). Similarly, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Clifford Morgan

MUR: 6188

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). This information revealed violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Clifford Morgan, including recordkeeping and reporting discrepancies in connection with his duties as treasurer of the San Antonio Police Officers' Association PAC ("the Committee"). Based on available information, there is reason to believe that Clifford Morgan knowingly and willfully violated 2 U.S.C. §§ 432(c)(5), 434(b)(4) and (6).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Summary

The Committee is a separate segregated fund of the San Antonio Police Officers' Association ("Association"), a labor organization, and a political committee within the meaning of 2 U.S.C. § 431(4)(B). See 2 U.S.C. § 441b(b). The Committee has filed reports with the Commission since 2004. During the relevant period, from February 2004 through February 2006, Clifford Morgan served as treasurer for both the Association and the Committee.

On December 4, 2004, Mr. Morgan made an unauthorized transfer of \$60,000 from the Committee Account to the Association's Police Benefit Fund/Store Operating Account ("Police Benefit Fund Account"). He then used the funds deposited into the Police Benefit Fund Account to make other transfers and disbursements. Specifically, in July and December 2005, he made

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three transfers totaling \$55,594.13 from the Police Benefit Fund Account to the Association's Operating Account (\$40,000 on July 14, 2005, \$14,594.13 on July 20, 2005, and \$1,000 on December 9, 2005). On July 14, 2005, he also transferred \$1,000 from the Police Benefit Fund Account to a Wells Fargo Money Service Business Account. Mr. Morgan also used a Committee credit card to make personal charges totaling \$2,400. According to the Committee, the \$60,000 unauthorized transfer and credit charges were not disclosed on the Committee's original disclosure reports and "were made without the knowledge and/or authority of the Committee and/or the Association's Officers and Board of Directors."

Mr. Morgan wrote three checks totaling \$49,080.88 drawn on the Association's main operating account (into which he had deposited funds from the Police Benefit Fund Account around the same time), and deposited the checks into his personal business bank account (\$25,276.00 on June 27, 2005, and \$11,200.05 and \$12,604.83 on November 4, 2005).

Mr. Morgan used the deposited funds to make unauthorized personal purchases. On June 29, 2005, he wrote a \$25,250.01 check to purchase a vehicle, and on November 11, 2005, he wrote a \$14,204.22 check to purchase another vehicle. On December 5, 2005, he closed his personal business account and transferred the remaining \$9,180.69 into another of his personal business accounts.

According to news reports, Mr. Morgan was asked to step down as treasurer on February 28, 2006, one day after the Association discovered funds missing from its accounts during an internal audit. See *News Roundup*, SAN ANTONIO EXPRESS-NEWS, March 9, 2006. The internal audit was apparently triggered when the Association began accruing overdraft

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fees. See Brian Chasnoff, *Ex-Union Official Indicted in Thefts*, SAN ANTONIO EXPRESS-NEWS, November 29, 2007.

From February 2006 through August 2006, the Committee failed to file disclosure reports and RAD received no communications from the Committee. On September 14, 2006, RAD contacted the Committee regarding their failure to respond to administrative fine notices. The Committee representative informed RAD for the first time that Mr. Morgan had resigned as Committee treasurer because of alleged "unethical" activities. The representative indicated that Robert Grajeda was the new Committee treasurer and that the Committee was being reorganized.

On September 15, 2006, Mr. Grajeda called RAD to confirm that he was the treasurer of the Committee and had been treasurer since March 2006, due to the firing of Mr. Morgan. Mr. Grajeda informed RAD that Mr. Morgan had been fired for embezzling from the Association and that a criminal investigation was underway to determine the scope of the embezzlement and whether any of the embezzled funds belonged to the Committee. On November 28, 2007, the Bexar County (Texas) District Attorney's Office issued a press release stating that Clifford Morgan, a San Antonio Police Officer for eleven years and treasurer of the Association from 2002-2008, had been indicted for stealing \$100,000-\$200,000 from the Association. The press release noted that Mr. Morgan used the Association's checks and credit cards for his personal benefit. The criminal case is still pending.

On October 15, 2008, the Committee filed amended disclosure reports for 2004-2008. The Committee also filed an E-text message explaining that "following some alleged aberrant behavior by the former PAC treasurer," the Committee had voluntarily audited its records and that an investigation determined that the former treasurer had transferred \$60,000 from the

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Committee account to the Association's General Account. The message further noted that none of the \$60,000 was returned to the Committee account and none was used for Federal elections. The message further stated that the bulk of the alleged improper use of funds by the former Committee treasurer occurred through the Association accounts. The \$60,000 transfer, dated December 4, 2004, appears on the amended 2004 Year End Report.

According to the Committee, Mr. Morgan has begun reimbursing the Association. In addition to a personal check from Mr. Morgan for \$8,000, the Committee has sold a truck he had purchased with the embezzled funds and applied the proceeds (\$17,000) to the amount owed. The Committee is also holding part of Mr. Morgan's retirement benefits to be applied towards the reimbursement of the embezzled funds.

B. Legal Analysis

Under the Act, a treasurer is required to accurately keep an account of and report disbursements. *See* 2 U.S.C. §§ 432(c)(5), 434(b)(4) and (6). Committee treasurers and any other person required to file any report or statement under the Act and the Commission's regulations are also personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it. 11 C.F.R. § 104.14(d).

According to Commission policy and practice, a former treasurer may be named as a respondent in his personal capacity when it appears that, while serving as a treasurer, he may have violated obligations that the Act or regulations impose personally on a treasurer and where, among other situations, the violations were knowing and willful. *See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 Fed. Reg. 3 (January 3, 2005);

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see, e.g., MUR 5610 (Earl Allen Haywood) and MUR 5721 (Lockheed Martin Employees' PAC). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). In *Hopkins*, the court found that an inference of a knowing and willful violation could be drawn "from the defendants' elaborate scheme for disguising their . . . political contributions. . ." *Id.* at 214-15. The court also found that the evidence did not have to show that a defendant "had specific knowledge of the regulations" or "conclusively demonstrate" a defendant's "state of mind," if there were "facts and circumstances from which the jury reasonably could infer that [the defendant] knew her conduct was unauthorized and illegal." *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 493 U.S. 838 (1989)).

The available information suggests that Mr. Morgan attempted to disguise his embezzlement by not disclosing the unauthorized transactions in Committee reports he prepared and then filed with the Commission. Mr. Morgan knowingly and willfully failed to keep an accurate account of Committee funds in order to hide his fraudulent scheme and failed to disclose these transactions in reports filed with the Commission.

Therefore, there is reason to believe that Clifford Morgan, in his personal capacity, knowingly and willfully violated 2 U.S.C. §§ 432(c)(5), 434(b)(4) and (6).